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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,646	12/27/2001	Kenji Yamagami	36992.00089 (HAL 198)	7987
30256	7590	03/09/2006	EXAMINER	
SQUIRE, SANDERS & DEMPSEY L.L.P			ROJAS, MIDYS	
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PALO ALTO, CA 94304-1043			ART UNIT	PAPER NUMBER
			2185	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/033,646	YAMAGAMI, KENJI
	<b>Examiner</b>	<b>Art Unit</b>
	Midys Rojas	2185

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 December 2005.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 and 11-21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 and 11-21 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 December 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

*Response to Arguments*

1. Applicant's arguments filed on 12/20/05 have been fully considered but are not persuasive.

Applicant argues that Wahl et al. does not teach the specific sequence of the steps of claims 1, 11, 14, and 21. Even though applicant argues a particular order to his invention, the invention as claimed does not specify a specific sequence. Therefore, all limitations are found in the Prior Art of record regardless of the specific sequence disclosed in the Prior Art. The claims do not distinguish a particular sequence of operation. Additionally, although the specification may discuss a single embodiment, the court has held that it "is improper to read a specific order of steps into method claims where, as a matter of logic or grammar, the language of the method claims does not impose a specific order on the performance of the method steps.", MPEP 2111.01.

Applicant argues that the teaching of Hubis et al. relied upon by the examiner is referred to by Hubis et al. as a flawed technique which should not be used. However, Hubis does not refer to this teaching as flawed. Instead, Hubis points out several problems with the process, thus supporting his improvements from the Prior Art. Despite Hubis' acknowledgement of the problems associated with the association, synchronization, and dissociation during snapshot backup processing, Hubis also discloses the important function that this method performs and the need for it in the Prior Art (Col. 1, lines 15-45). Therefore, one with ordinary skill in the art at

the time the invention was made would be motivated to modify the system of Wahl et al. as suggested. Also see MPEP 2123, II. NONPREFERRED AND ALTERNATIVE EMBODIMENTS CONSTITUTE PRIOR ART.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8, 11-17, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al. (6,324,654) in view of Hubis et al. (6,182,198).

Regarding Claims 1 and 19, Wahl et al. (6,324,654) discloses a method for making a remote copy between a first storage subsystem (primary system 12) and a second storage subsystem (primary system 14, see Figure 5) which are connected to each other via a path (LAN/WAN 20, Figure 1), the first storage system connected to a first host (processor of the first computer system 12), the method comprising the steps of:

providing a first logical volume to the first storage subsystem (Primary system 12, Logical Group 0) and a second logical volume to the second storage subsystem (Primary system 14, Logical Group 0),

the second logical volume being a copied logical volume of the first logical volume through the use of mirror daemons 24A and 30A, the first logical volume and the second logical volume being in sync state through data links shown in Figure 5,

making a third logical volume in the first storage subsystem (Primary system 12, Logical Group 1), the third logical volume being a copied logical volume of the first logical volume where the copying is supervised by master mirror daemon 30, the first logical volume and the third logical volume being in sync state through Master Mirror daemon 30,

making a fourth logical volume in the second storage subsystem (Primary system 14, Logical Group 1), the fourth logical volume being a copied logical volume of the second logical volume where the copying is supervised by master remote mirror daemon 30, the second logical volume and the fourth logical volume being in sync state through Master Mirror daemon 30.

The fourth and third logical volumes (Logical groups 1) are synchronized through data links shown in figure 5 (Column 11, lines 44-67).

The relationship between the first and third logical volumes as well as the second and fourth logical volumes is described by Wahl as “local data mirroring” which is used to protect data at a local level and which can be provided in a system in addition to remote data mirroring (see Col. 1, line 26-65).

Although Wahl does mention that one implementation of his invention supports **up to** 512 logical groups, this fact does not mean that 512 logical groups must be present. The invention can be implemented with less logical groups, in which case the local mirroring techniques described by Wahl could be efficiently implemented in combination to the described remote mirroring techniques of his invention.

Wahl et al. does not disclose breaking the sync state between the first logical volume and the third logical volume and between the second logical volume and the fourth logical volume or coupling a first auxiliary host to the third logical volume and enabling the first auxiliary host to perform operations on the third logical volume while the first host continues operations on the first logical volume and while the first logical volume and second logical volume continue in sync state.

Hubis discloses disassociating storage space from storage system (mirror 22b is removed or disassociated from storage system 26) and coupling another host to the disassociated mirror (mirror 22b is placed in storage system 23 for backup completion, thus having the backup server as its host). See col. 1, lines 34-45. While the disassociated mirror is associated with the other host (system 23), the mirrors in system 26 are still accessible to the database server 20.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to breaking the sync state between the first logical volume and the third logical volume and between the second logical volume and the fourth logical volume, couple a first auxiliary host to the third logical volume and enabling the first auxiliary host to perform operations on the third logical volume while the first host continues operations on the first logical volume and while the first logical volume and second logical volume continue in sync state (as taught in Hubis) since doing this would allow the existing system to continue to be accessed while the third and fourth logical volumes are synchronizing.

Claim 11 is rejected using the same rationale as that of Claim 1 wherein a first means for storing data is represented by Primary system 12, Logical Group 0; a second means for storing

data is represented by Primary system 14, Logical Group 0; a third means for storing data is represented by Primary system 12, Logical Group 1; and a fourth means for storing data is represented by Primary system 14, Logical Group 1. The means for breaking the sync state is taught by Hubis' act of removing mirror 22b from storage system 26 and the means for coupling a first auxiliary host to the third means for storing data is taught by Hubis' act of placing mirror 22b in storage system 23 for backup completion, thus having the backup server as its host). See col. 1, lines 34-45. While the disassociated mirror is associated with the other host (system 23), the mirrors in system 26 are still accessible to the database server 20.

Claims 14 and 20 are rejected using the same rationale as that of Claim 1 wherein a first logical unit is represented by Primary system 12, Logical Group 0; a second logical unit is represented by Primary system 14, Logical Group 0; a third logical unit is represented by Primary system 12, Logical Group 1; and a fourth logical unit is represented by Primary system 14, Logical Group 1. The first local mirror is the connection between Primary system 12, Logical Group 0 and Primary system 12, Logical Group 1; while the second local mirror is the connection between Primary system 14, Logical Group 0 and Primary system 14, Logical Group 1. The splitting of the first local and second local mirrors is taught by Hubis' act of removing mirror 22b from storage system 26 and the coupling of a first auxiliary host to the third logical unit is taught by Hubis' act of placing mirror 22b in storage system 23 for backup completion, thus having the backup server as its host). See col. 1, lines 34-45. While the disassociated mirror is associated with the other host (system 23), the mirrors in system 26 are still accessible to the database server 20.

Claim 21 is rejected using the same rationale as that of Claim 1 wherein a first logical unit is represented by Primary system 12, Logical Group 0; a second logical unit is represented by Primary system 14, Logical Group 0; a third logical unit is represented by Primary system 12, Logical Group 1; and a fourth logical unit is represented by Primary system 14, Logical Group 1. The first local mirror is the connection between Primary system 12, Logical Group 0 and Primary system 12, Logical Group 1; while the second local mirror is the connection between Primary system 14, Logical Group 0 and Primary system 14, Logical Group 1. The splitting of the first local and second local mirrors is taught by Hubis' act of removing mirror 22b from storage system 26 and the coupling of a first auxiliary host to the third logical unit is taught by Hubis' act of placing mirror 22b in storage system 23 for backup completion, thus having the backup server as its host). See col. 1, lines 34-45. While the disassociated mirror is associated with the other host (system 23), the mirrors in system 26 are still accessible to the database server 20. The codes for enabling and for establishing the behaviors for the system are the programs that allow for the system to perform the described functions.

Regarding Claim 2, Wahl in view of Hubis discloses the method further comprising: providing a second auxiliary host at the second storage subsystem (processor part of primary system 14), the second auxiliary host having permissions to access the fourth logical volume (Logical group 1 of primary system 14); and executing applications using the first auxiliary host, the second auxiliary host, the third logical volume and the fourth logical volume where such

operation includes using the mirror daemons to process data replication from one logical volume to the other (Column 11, lines 50-67).

Regarding Claims 3, 4, and 15, Wahl in view of Hubis discloses the method wherein executing applications comprises performing data recovery, and making a third logical volume in the first storage subsystem comprises storing a copy of data used by the first host on the third logical volume, and making a fourth logical volume in the second storage subsystem comprises forming a mirror image of data in the third logical volume on the fourth volume (Column 23, lines 30-43). In having a data recovery system implemented in the mirroring system of the invention, testing the recovery system periodically would involve performing the recovery procedure using test data. Furthermore, a data recovery test would have to include a simulation of a disaster at the primary storage system 12; and testing backup of information from the third logical volume to the fourth logical volume, and recovery there from, as it would be done in a real situation.

Regarding Claims 5, 6, and 16, Wahl in view of Hubis discloses the method wherein executing applications comprises performing data mining, where data mining comprises: establishing a data warehouse having a copy of on line transaction processing data at the first auxiliary host (primary system); and performing data analyses on the data warehouse information (authentication handshake... verify configuration file... Column 11, lines 14-31), and performing backups and/or recovery of the data warehouse information of the third logical volume to the fourth logical volume (...commits data updates to the mirror device);

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and making a third logical volume in the first storage subsystem comprises establishing on the third volume a data warehouse having a copy of on line transactions processing data used by the first host wherein the copying from one logical group to the other is maintained by the master mirror daemon 30, and making a fourth logical volume in the second storage subsystem comprises forming a mirror image of data in the third logical volume on the fourth volume, where the mirroring is controller by mirror daemons 24B and 30B (See Figure 5, Column 11, line 44-line 67).

Regarding Claims 8 and 17, Wahl in view of Hubis discloses the method wherein synchronizing the fourth logical volume with the third logical volume comprises: issuing a command to form a mirror with a no copy option (“...feeds data over the network 20 in the same order in which it is stored on the remote mirror in the secondary computer system”); and creating a new copy management storage area for the mirror (write log 18 keeps track of current updates).

Please see Column 10, lines 1-25.

Regarding Claim 12, Wahl in view of Hubis disclose the apparatus further comprising: a means for creating an atomic split command, the command comprising: an identity of a first means for storing data to serve as a primary volume (primary computer system 12); and an identity of a second means for storing data to serve as a secondary volume (primary storage system 14, mirror devices 32). Identifying both of these volumes is done when attempting to perform a remote data mirroring operation and authenticating the connection between the volumes prior to starting the mirroring process.

Regarding Claim 13, Wahl in view of Hubis disclose The apparatus further comprising: a means for creating an atomic split command, the command comprising: a first remote mirror (logical group 0, secondary system), comprised of the first means for storing data and the second means for storing data; a second remote mirror (logical group 1, secondary system), comprised of the third means for storing data and the fourth means for storing data; a first local mirror (logical group 0, primary system), comprised of the first means for storing data and the third means for storing data; and a second local mirror (logical group 1, primary system), comprised of the second means for storing data and the fourth means for storing data (figure 5).

4. Claims 7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al. (6,324,654) in view of Hubis et al. (6,182,198) as applied to claims 1 and 14, and further in view of Kamvysselis et al. (6,496,908).

Regarding Claim 7, Wahl in view of Hubis discloses the mirroring method of claim 1. Wahl in view of Hubis does not teach determining if the sync state between the first logical volume and the second logical volume is an asynchronous mirror and if so:

inhibiting sending of further write data from the first storage subsystem to the second storage subsystem; recording incoming write data at the first storage subsystem; and resynchronizing the first logical volume and the second logical volume after breaking the sync state between the second logical volume and the fourth logical volume.

Kamvysselis discloses determining if the sync state between the first logical volume and the second logical volume is an asynchronous mirror (Figure 4, #66) and if so:

inhibiting sending of further write data from the first storage subsystem to the second storage subsystem, where the inhibiting step comprises marking the data to be mirrored but not sending the data for mirroring; recording incoming write data at the first storage subsystem where the recording occurs at the queue of mirror requests (Figure 5, #76) and such queue holds the marked data to be mirrored; and re-synchronizing the first logical volume and the second logical volume after breaking the sync state between the second logical volume and the fourth logical volume, where the re-synchronizing step occurs when all mirroring events, including those previously inhibited are completed (Figure 5, #84). Please see Column 7, lines 33-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the system of Wahl in view of Hubis with the sync determination of Kamvysselis since doing so allows the system to differentiate between asynchronous and synchronous mirroring operations thus allowing for the prioritization of one mirroring technique over the other.

Regarding Claim 18, Wahl in view of Hubis discloses the mirroring method of claim 14. Wahl in view of Hubis does not teach determining if the sync state between the first logical volume and the second logical volume is an asynchronous mirror and if so:

copying all pending information to the second storage system.

Kamvysselis discloses determining if the sync state between the first logical volume and the second logical volume is an asynchronous mirror (figure 4, #66) and if so:

copying all pending information to the second storage system where the copying occurs after the data is marked for mirroring, queued for mirroring and finally, mirroring events are completed (see Figure 5).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the system of Wahl in view of Hubis with the sync determination of Kamvyssellis since doing so allows the system to differentiate between asynchronous and synchronous mirroring operations and thus allowing for the prioritization of one mirroring technique over the other.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Midys Rojas whose telephone number is (571) 272-4207. The examiner can normally be reached on M-F 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on (571) 272-4210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MR

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